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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a  
separate compilation

## भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than the Administration of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 2 सितम्बर, 1996

आ.अ. 99.—लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) धारा 13 क को उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत निर्वाचन आयोग, सिक्किम राज्य सरकार के परामर्श से श्री आर. एस. श्रेष्ठ, आई. ए. एस., आयुक्त एवं सचिव, सूचना और जनसम्पर्क तथा मुद्रण और लेखन सामग्री को सिक्किम राज्य के मुख्य निर्वाचन अधिकारी के रूप में, उनके कार्यभार ग्रहण करने की तारीख से अगले आदेशों तक, श्री एन. डी. बिगप्पा के स्थान पर एतद्वारा नामित करता है। उन्हें राज्य सचिवालय में निर्वाचन आयोग के अधीन निर्वाचन संबंधी कार्यों के विभाग में सरकार के सचिव के रूप में भी पदाभिहित किया जाएगा।

2. आयोग ने नोट किया है कि श्री आर. एस. श्रेष्ठ आई. ए. एस., के पास आयुक्त और सचिव, सूचना और जनसम्पर्क तथा मुद्रण एवं लेखन सामग्री का अतिरिक्त कार्यभार है। आयोग सिक्किम राज्य में पूर्ण-कालिक मुख्य निर्वाचन अधिकारी के लिए जोर नहीं दे रहा है क्योंकि राज्य में दो से अधिक संसदीय निर्वाचन क्षेत्र नहीं हैं। जैसे ही साधारण निर्वाचन सन्निकट होते हैं, श्री आर. एस. श्रेष्ठ

को सभी ओर प्रत्येक अतिरिक्त कार्यभार से मुक्त कर दिया जाए और एक अनुपालन रिपोर्ट आयोग को भेज दी जाए।

3. मुख्य निर्वाचन अधिकारी, सिक्किम के रूप में कार्य करते हुए श्री आर. एस. श्रेष्ठ, आयोग से पूर्व लिखित स्वीकृति लिए बिना, उपर परा 2 में उल्लिखित कार्यभारों के अतिरिक्त सिक्किम सरकार के अधीन कोई अन्य कार्यभार ग्रहण नहीं करेंगे।

4. साधारण निर्वाचन के सन्निकट आने पर यदि श्री आर. एस. श्रेष्ठ को उनके सभी अतिरिक्त कार्यभारों से मुक्त नहीं किया जाता या आयोग से पूर्व लिखित स्वीकृति लिये बिना उपर परा 2 में वर्णित कार्यभार के अलावा किसी भी प्रकार का कोई अतिरिक्त कार्यभार सौंपा जाता है या ग्रहण करने का आदेश दिया जाता है तो वे इस आदेश की शर्तों के अनुसार, ऐसा अतिरिक्त कार्यभार ग्रहण करने की तारीख से मुख्य निर्वाचन अधिकारी सिक्किम के पदभार से अपने आप हटा दिए गए समझे जाएंगे और किसी अलग आदेश को जारी नहीं किया जाएगा अथवा जारी करने की आवश्यकता नहीं होगी। उसके पश्चात मुख्य निर्वाचन अधिकारी के रूप में ड्यूटी और कार्य के तथाकथित निर्वहन में उनके द्वारा की गई सभी या कोई करवाई

अप्रतिष्ठित, धोत्राधिकार के बिना नास्ति, अकृत और अत्यंत  
होती और वह स्वयं अनुशासनात्मक कार्रवाई के भागी होंगे।

[सं. 154/मिक्किम/96]

आदेश से,  
अर्चना अरोरा, सचिव

## ELECTION COMMISSION OF INDIA

New Delhi, the 2nd September, 1996

O.N. 99.—In exercise of the powers conferred by sub-section (1) of section 13-A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of the State of Sikkim hereby nominates Shri R. S. Shreshta, IAS, Commissioner-cum-Secretary of Information and Public Relations and Printing and Stationery as the Chief Electoral Officer for the State of Sikkim with effect from the date he takes over charge and until further orders vice Shri N. D. Chingappa. He will also be designated as Secretary to the Government in the department in the State Secretariat dealing with elections under the Election Commission.

2. The Commission has noted that Shri R. S. Shreshta has additional charge of Commissioner-cum-Secretary of Information and Public Relations and Printing and Stationery. The Commission is not insisting on a full-time Chief Electoral Officer in the State of Sikkim as the State has not more than two parliamentary constituencies. As soon as a general election becomes imminent Shri R. S. Shreshta shall be divested of all and every additional charge and a compliance report sent to the Commission.

3. If Shri R. S. Shreshta while functioning as Chief Electoral Officer, Sikkim shall not hold, without the prior written approval of the Commission any additional charge, whatsoever, under the Government of Sikkim over and above the charges mentioned in paragraph 2 above.

4. If Shri R. S. Shreshta is not divested of all his additional charges as soon as a general election becomes imminent or is interested with or ordered to hold any additional charge of any kind whatsoever over and above the charge mentioned in paragraph 2 above, without the prior written approval of the Commission, Shri R. S. Shreshta will stand removed from the office of the Chief Electoral Officer, Sikkim from the date of assumption of any such additional charge in terms of this very order and no other order will, or need to, be issued. All and any action taken by him thereafter in the discharge of his duties and functions as the Chief Electoral Officer shall be unauthorised, without jurisdiction non-est and null and void and he shall render himself liable to disciplinary action.

[No. 154/SKM/96]

By Order,  
ARCHNA ARORA, Secy.

नई दिल्ली, 17 सितम्बर, 1996

आ. अ. 100.—1991 की निर्वाचन अर्जी. सं. 7 में बिहार उच्चतम न्यायालय पटना (पटना) के तारीख 25-8-95 के आदेश के विरुद्ध दायित्व की गई 1995 की सिविल अपील संख्या 8299 (श्री भोगेंद्र झा बनाम श्री मनोज कुमार झा) में न्याय के उच्चतम न्यायालय नई दिल्ली के दिनांक 23-4-1996 के आदेश के लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116ग (2) (ख) के अनुसरण में निर्वाचन आयोग द्वारा एतद्वारा प्रकाशित करना है।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/बिहार/(7/91)/96]

आदेश से,  
सी. आर. अरोरा, सचिव

New Delhi, the 17th September, 1996

O.N. 100.—In pursuance of Clause (b) Sub-Section (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 23rd April, 1996 of the Supreme Court of India in Civil Appeal No. 8299 of 1995 (Shri Bhogendra Jha Vs. Sh. Manoj Kumar Jha) filed against the Judgement dated 25-8-1995 High Court of Judicature at Patna, Bihar in Election Petition No. 7 of 1991.

### IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 8299 OF 1995

Shri Bhogendra Jha .. Appellant

Vs.

Shri Manoj Kumar Jha .. Respondent

### ORDER

The appellant is a returned candidate to the 10th Lok Sabha from 13, Madhubani Parliamentary Constituency in Bihar. The last date for filing nominations for the Lok Sabha Elections was April 26, 1991. The date of scrutiny was April 27, 1991. Out of 61 candidates who filed nominations, three nomination papers of Pawan Kumar Pathak, PW-4, Lal was held on May 23, 1991. Out of 49 candidates who were rejected by the Returning Officer during scrutiny, Poll was held on May 23, 1991. Out of 49 candidates who remained in the contest, the appellant had secured 3,30,111 votes, i.e., 51.91 per cent as against the nearest candidate Dr. Jagannath Mishra who secured 2,50,020, i.e., 39.31 per cent. Rest of the candidates could not even protect their deposits. The respondent Manoj Kumar Jha, an elector filed the election petition impugning rejection of the nominations of PW-4 and PW-6 as bad in law. The High Court in the impugned judgement has upheld his contention and declared the election of the appellant as void in E.P.A. No. 7/1991 dated August 25, 1995 by Patna High Court.

In this appeal, the only question is : whether the view of the High Court that the Returning Officer

had not conducted summary enquiry under section 36 of the Representation of People Act, 1951 (for short, the 'Act') is correct in law? It is seen that even Pawan Kumar Pathak (PW-4) and Lal Bahadur Singh, PW-6 did not feel aggrieved against the rejection of the nominations as they did not file election petitions though they were examined on behalf of the respondent as witnesses. The appellant, admittedly, was not and could not present himself at the time of scrutiny of nomination papers and rejection of the nominations. He did not know what had transpired at the time of scrutiny and rejection of the nomination. As regards PW-4, Pawan Kumar Pathak, the orders of rejection read thus :

"the proposer name does not tally with the name as entered in the electoral roll hence rejected."

As regards PW-6, it was rejected for the reason given thus :

"The name of the proposer does not tally with the name as entered in the electoral roll hence rejected."

It is not in dispute that PW-4's proposer's electoral roll number with S. No. 413, Part 190 while in his nomination paper he mentioned S. No. 113 Part 190. Lal Bahadur Singh's proposer mentioned his name was in the Part 75 of electoral roll; in fact it is in Part 74. The question therefore, is whether it was necessary for the Returning Officer to make a roving enquiry as regards the correct number of the proposers in the nomination papers and the electoral roll. Section 33 of the Act prescribes procedure for presentation of the nomination on the appointed date by each candidate either in person or by his proposer, between the specified time under sub-section (1) thereof. The nomination thereof is to be completed in the prescribed form and signed by the candidate and by an elector of the constituency as mandated under Section 31. Under sub-section (4), on the presentation of the nomination paper, the Returning Officer has to satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as entered in the electoral roll. The proviso reads as under :

"Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the election roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the persons or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that

any such misnomer or inaccurate description or clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked."

Section 36 prescribes the procedure for the scrutiny of nomination paper. Sub-section (1) emphasises that on the date of the scrutiny of nomination paper, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate and by no other person, may attend at such time and place as the Returning Officer may appoint; and the Returning Officer shall give them all reasonable facilities for examining the nomination papers of the candidates which might have been delivered under Section 33. Under sub-section (2) thereof the nomination paper shall be examined by the Returning Officer thereafter and he shall decide all objections which may be made to any nomination and may, either on such objection or after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the grounds enumerated in clause (a), namely, whether the candidate is not qualified or is disqualified for being chosen to fill the seat or there has been a failure to comply with any of the provisions of Section 33 or Section 34 or the signature of the candidate or the proposer on the nomination paper is not genuine. Under sub-section (4), the returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Even though no objection is raised by any other candidate, if the Returning Officer on his own motion finds that the defect is of substantial character, he is empowered to reject the nomination. If any objection is raised, the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the Returning Officer shall record his decision on the date to which the proceedings are adjourned as envisaged in proviso to sub-section (5). The Returning Officer shall hold, under sub-section (1), the scrutiny on the late in that behalf and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or causes beyond his control. Under sub-section (6), the Returning Officer shall endorse on such nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection. Under sub-section (8), immediately after all the nomination papers have been scrutinised and decisions, accepting or rejecting the same, have been recorded, the Returning Officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it on his notice board. What would be a defect of substantial character is always a question of fact based on factual matrix on record. Each case is required to be considered on its own backdrop.

This Court in a recent judgement dated 14-3-1996 in C.A. No. 6478/95 (Rafiq Khan & Anr. v. Laxmi Narain Sharma) reviewed the entire case law and held that :

"Unless the defect is one which can be per se noticed and corrected at the stage of sec-

tion 33(4), or later at the stage of section 36(4) without the need to refer to various other documents the same cannot be said to be of a non-substantial character. In the instant case also the defect as to the number could have been said to be not of a substantial character if the appellant had shown that the name of the proposer appeared on the very same sheet at serial number 138 instead of 136 i.e. only two steps away. In that case one can say that the Returning Officer could have verified the same if he had exercised due diligence. In such a situation even if the appellant had his proposer absent the court could have taken the view that the defect was not of a substantial nature. But the defect cannot be noticed unless the Returning Officer is required to sift through various other documents or the voters list or is required to undertake an enquiry as to whether the proposer's name appears anywhere else in the voters list. The defect may not be one capable of being cured without the assistance of the candidate or his proposer and in such a situation he would be justified in rejecting the nomination paper. In the instant case since there is no evidence to suggest that the name of the proposer appeared on that very sheet at serial number 138 instead of 136 in the electoral roll, we find it difficult to find fault with the rejection of the nomination paper by the Returning Officer."

Under Section 36(4) of the Act, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Under Section 36(1), the Returning Officer has the power to conduct an enquiry. It is settled law that it is a summary enquiry. When the Returning Officer scrutinise the nomination paper, the parties or the nominees are required to be present and if they seek liberty to place the necessary material, the Returning Officer is enjoined to adjourn the case to the next day. In case they are able to place the necessary material and satisfy the Returning Officer of the correctness of the enrolment as a candidate or the correctness of the nominee, the Returning Officer would consider the same. But he is not expected to sift the evidence and find the placement in the electoral roll, the name and particular of the nominee.

In this case, PWs 4 and 6 who were the candidates and had filed their nominations, though admittedly were present, did not ask for and opportunity nor attempted to satisfy the Returning Officer as to the correctness of the particulars furnished by them in the nomination papers of their proposers. Therefore, the Returning Officer was not expected to make a roving enquiry to find out whether the names of the proposers found place in the electoral roll. It is the duty of the candidate/proposer to satisfy the Returning Officer. It was suggested to the witnesses, PWs 4 and 6, that they were only dummy candidates and had no interest in the election and that in the event Dr. Misra was unsuccessful at the election, they would be used as a means to unsettle the election of the appellant.

We find force in the suggestion. It was suggested that Dr. Misra had borne their travel expenses to attend the Court for giving evidence. It is an admitted position that they did not even know the result of the election and the person who succeeded in the election. In other words, they did not even make any attempt to know the result of the election, apart from the fact that they did not file even the election petition. Under these circumstances, it would appear that PWs 4 and 6 were only dummy candidates to be used as reserve material to impugn the election of returned candidate in the event the election result went against any unsuccessful candidate.

Accordingly, we hold the High Court was not right in declaring the election of the appellant as void on the ground that the nominations of PWs 4 and 6 were not valid in law.

The appeal is accordingly allowed with costs quantified at Rs. 15,000/-. The judgement of the High Court is set aside. The election petition stands dismissed.

K. RAMASWAMY, J.  
B. L. HANSARIA, J.  
S. B. MAJMUDAR J.

New Delhi,  
April 23, 1996.

[No. 82/BR/(7/91)/96]

By Order,  
C. R. BRAHMAM, Secy.